tunities to embezzle them, as when in transit. The same reasons, therefore, upon which are based the severe accountability of the carrier for the safety of the goods while they are strictly in transit, would seem to require that the company should be the custodian of the goods as carrier, until they had either tendered them to the consignee, or had, after notifying him of their arrival, given him a reasonable time within which to take them away. The principal case is in accord with this conclusion.

CARRIERS—TRANSPORTATION OF BAGGAGE—RELATION OF CARRIER AND PASSENGER.—ALABAMA GREAT SO. RY. V. KNOX, 63 So. REP., 538.—Where a passenger purchases a ticket from one point to another over a carrier's line and checks his baggage thereon, it is not necessary, in order to create the relation of carrier and passenger with reference to the baggage, so as to render the carrier liable as such for the loss thereof, that the passenger should accompany the baggage either on the same train, or at all.

A traveller is not entitled to have his personal baggage carried in consideration of fare paid by him, unless it is on same train which carries him, is the general rule. Angell, *Carriers,* Sections 107, 110; *II Redf. Railroads* (4th edition), 39; Thompson, *Carriers,* 521, Section 8. In *Hutchinson on Carriers,* Vol. 3, page 1516, the rule is stated: "If that which would have been baggage had it been accompanied by the owner should be accepted when owner does not become a passenger, the carrier would not be responsible for it as baggage." The rule is so laid down in most of the cases. *Glaso v. N. Y. Central,* 36 Barb., 557; *Wilson v. Grand Trunk,* 56 Me., 60; *Bomar v. Maxwell,* 28 Tenn., 621; *Merrill v. Grinnell,* 30 N. Y., 594; *Tewes v. Steamship Co.,* 85 N. Y. S., 60; *Collins v. Railroad,* 10 Cushing, 506. In *Marshall v. Pontiac Railroad,* 126 Mich., 45, it was held that the company became a mere gratuitous bailee of baggage when the owner did not accompany it. In *Beer v. Railroad,* 67 Conn., 417, in an opinion written by Baldwin, J., it was held the company was not even responsible as gratuitous bailee, when, through a mutual mistake, the baggage was checked without the owner's having bought, or intending to buy a ticket. In *Elvira Harbeck,* 2 Blatchf., 366, however, it was held the company was a bailee for hire, and must exercise due care. In *Shaw v. Northern Pacific,* 40 Minn., 110, the company was held liable as a common carrier for baggage shipped on a later train than the owner took. However, this was for the company's convenience. In *McKibben et als. v. Wisconsin Central Railroad,* 100 Minn., 270, the general rule is criticized but the decision is on another point. The only case in harmony with *Alabama Great So. Ry. v. Knox,* is *Larned v. Central R. R. of N. J.,* 79 Atl., 289 (1911), in which there is a *per curiam* decision without discussion. In view of modern conditions, it would seem that this is better than the rigid, technical rule established when it was necessary, for the carrier's protection, that the traveller be on the train that carried his baggage, and in most cases it would appear that the carrier is estopped by his conduct from claiming the strict application of the rule. Unquestionably the overwhelming weight of authority is against the principal case, but there have been few adjudications of the point in recent years and the

authority of the principal case and *Larned v. Central R. R. of N. J., supra,* might now be decisive in many jurisdictoins.

CONDUCT OF JUDGE—COMMENTS ON EVIDENCE.—STATE v. OVERTON, 88 ATL., 689 (N. J.).—*Held,* that it is always the right and often the duty of the judge to comment on the evidence and give the jury his impressions of its weight and value, and such comment is not assignable for error as long as the ultimate decision on disputed facts is plainly left to the jury.

The prevailing American rule is that instructions bearing on the weight of evidence are erroneous. *Harkey v. State,* 43 Tex. Crim., 100; *Burt v. State,* 72 Miss., 408; see *State v. Main,* 69 Conn., 123. So an instruction that the evidence of a certain witness should be received with a great deal of care was properly refused. *Hronek v. People,* 134 Ill., 139. An instruction that greater weight should be given to the evidence of those witnesses whose means of knowledge was superior was error. *Muncie Pulp Co. v. Keesling,* 166 Ind., 479. An instruction that the preponderance of evidence is not to be determined merely by the number of witnesses on each side is error. *McCoy v. Milwaukee St. Ry. Co.,* 82 Wis., 215, 52 N. W., 93 (and cases there cited). But if the erroneous instruction is followed by another and correct one, then the jury is not misled and there is no error. *Garske v. Ridgeville,* 123 Wis., 503. The English rule is that the judge may charge on matter of fact, it is stated by Lord Hale in his *History of the Common Law,* that the jury is to have the benefit of the observation of the judge both in point of law and in point of fact by way of direction. 2 *Hale Hist. Com. Law* (5th ed.), 147-156. The courts seem to be in much greater accord on the proposition that the judge cannot instruct upon the weight of evidence than they are on the question of whether he can comment on it in any way, whether in the charge or not. In South Carolina, which is the only state having a constitutional provision against charging the jury on matter of fact, it has been held that a comment on the weight of evidence is erroneous even if the judge specifically states that the jury is not to be bound by his opinion. *State v. White,* 15 S. C., 381. And some courts go so far as to hold that the judge cannot use any language in the hearing of the jury that can be construed into an expression of opinion on the weight of evidence. *State v. Shuff,* 9 Idaho, 115. He cannot assist the jury to remember whether certain evidence was offered or not. *State v. Foster,* 40 Atl., 939 (Del.); affirmed, 43 Atl., 265; see also *U. S. v. Briggs,* 19 D. C., 585. He cannot state the evidence in his charge. *State v. Atkins,* 49 S. C., 481; *contra, Redding v. Ry. Co.,* 5 S. C., 69. There is a formidable line of authority opposing the doctrine just stated and holding that a judge may comment on the evidence within certain limits. He may make such comments as will enable the jury to see the relevancy and pertinency of the evidence to the particular issue involved. *People v. Fanning,* 131 N. Y., 659. He may sum up the evidence. *Driskill v. State,* 7 Ind., 338. And make such comment as his judicial discretion may dictate. *State v. Valentine,* 71 N. J. L., 552. But not to the prejudice of either party. *People v. Bonds,* 1 Nev., 33; *State v. Stowell,* 60 Iowa, 535. He should recalll and collate the testimony. *State v. Gratton,* 95 Me., 364. And